

**ACT OF DONATION**

**STATE OF LOUISIANA**

**TO THE STATE OF LOUISIANA**

**PARISH OF EAST BATON ROUGE**

**FROM :** (insert name) Corporation

**ACT OF DONATION**

BEFORE US, the undersigned notaries, duly commissioned and qualified in and for the parish(es)/county and state(s) hereinafter stated, and in the presence of the competent witnesses hereinafter named and undersigned, on the respective dates hereinafter stated, personally came and appeared Representative, acting on behalf of (insert name) Corporation, who declared the following, to wit:

1. He is the (Insert title) of (insert name) Corporation, hereinafter called "Donor", a (insert state of incorporation) corporation, whose address is (insert address).

2. He is duly authorized to make the donations specified herein and to execute this Act of Donation on behalf of Donor.

and

ROBERT J. BARHAM, acting on behalf of the Louisiana Department of Wildlife and Fisheries, who declared the following, to wit:

1. He is the Secretary of the Louisiana Department of Wildlife and Fisheries, the agency charged with administering and enforcing the Louisiana Artificial Reef Development Program, pursuant to La. R.S. 56:639.5(B).
2. He is duly authorized to accept the donations specified herein and to execute this Act of Donation on behalf of the Louisiana Department of Wildlife and Fisheries, acting on behalf of the State of Louisiana ("Donee").

## ARTICLE I - DEFINITIONS

- 1.1 Agreement.** "Agreement" shall mean this Act of Donation from (insert name of donor) to the State of Louisiana through the Louisiana Department of Wildlife and Fisheries.
- 1.2 Artificial Reef Fund.** "Artificial Reef Fund" shall mean the Louisiana Artificial Reef Development Fund, LSA R.S. 56:639.8.
- 1.3 Donated Structure.** "Donated Structure" shall mean the (insert description of structure) to be used as an Artificial Reef.
- 1.4 Donee.** "Donee" shall mean the State of Louisiana through the Louisiana Department of Wildlife and Fisheries.
- 1.5 Donor.** "Donor" shall mean (insert name of entity) Corporation.
- 1.6 Conservation Fund.** "Conservation Fund" shall mean the Louisiana Wildlife and Fisheries Conservation Fund, as established in La. Const. 1974, Art. VII, Section 10-A.
- 1.7 Louisiana Fishing Enhancement Act.** "Louisiana Fishing Enhancement Act" shall mean the Louisiana Fishing Enhancement Act, LSA R.S. 56:639.1, et seq..
- 1.8 Louisiana Plan.** "Louisiana Plan" shall mean the Louisiana Artificial Reef Plan.
- 1.9 Louisiana Artificial Reef Development Program.** "Louisiana Artificial Reef Development Program" shall mean the Louisiana Artificial Reef Development Program, LSA R.S. 56:639.5.
- 1.10 National Fishing Enhancement Act.** "National Fishing Enhancement Act" shall mean the National Fishing Enhancement Act of 1984, 33 USCA 2101, et seq..
- 1.11 National Artificial Reef Plan.** "National Artificial Reef Plan" shall mean the National Artificial Reef Plan, 33 USCA 2103.
- 1.12 Notification of Acceptance.** "Notification of Acceptance" shall mean the document entitled

"Notification of Acceptance of Structure Placement and Acceptance of Title", a copy of which is attached hereto and made a part hereof.

**1.13 Person.** "Person" or "Persons" shall mean both natural and juridical persons as defined by Louisiana Civil Code Article 24.

**1.14 Structure Site.** "Structure Site" shall mean the site described in Article 5.1 below.

## **ARTICLE II - DONATION OF STRUCTURE**

**2.1 Donation of Structure.** In consideration of the mutual covenants and conditions set forth below, and for the purpose of enhancing fishing resources within and adjacent to the coast of the State of Louisiana, Donor, in accordance with the National Fishing Enhancement Act (and more particularly the National Artificial Reef Plan, and the Louisiana Fishing Enhancement Act (and more particularly the Louisiana Artificial Reef Development Program), does hereby irrevocably donate, transfer, carry, assign, and deliver unto the Donee the following described structure, which is hereinafter collectively referred to as "Donated Structure", to wit:

**(INSERT DESCRIPTION OF STRUCTURE)**

## **ARTICLE III - WARRANTIES**

**3.1 Disclaimer.** This donation is made by Donor without any warranty, either express or implied, and in particular any warranty as to the condition, fitness, or usability of said structure for any purpose, except as provided as follows, or as otherwise provided in this Agreement.

- 3.2 Materials.** Donor warrants that the materials donated meet the applicable requirements of the National Artificial Reef Plan, the Louisiana Artificial Reef Plan, and any and all permits issued according to those plans, including but not limited to the permit issued by the U.S. Army Corps of Engineers.
- 3.3 Hazardous Material.** Donor warrants that, except for possible trace amounts, the Donated Structure is free of any hydrocarbons or other hazardous materials listed in any current federal, Louisiana state, or local law, ordinance, rule, regulation, order, decree, or requirement.
- 3.4 Good Title.** Donor warrants that their title to the Donated Structure is free and clear of all encumbrances of any kind or description.

#### **ARTICLE IV - PERMITS**

- 4.1 Permits.** As set out in La. R.S. 56:639.9, Donee shall be responsible for obtaining the required permits for the construction and management of an artificial reef at the Structure Site described below pursuant to the National Fishing Enhancement Act and the Louisiana Fishing Enhancement Act.

#### **ARTICLE V - LOCATION AND PLACEMENT**

- 5.1 Location.** Operations to place the Donated Structure on the floor of the Gulf of Mexico shall be conducted by Donor at the site selected by the Donee. The Donated Structure shall be placed such that a **minimum clearance of eighty-five (85)** feet below the mean low sea level of the surface of the water is maintained, in such a manner that the Donated Structure shall be acceptable by the U.S. Coast Guard for the use of unlit aids to navigation to mark the

site. The general location for the placement of the Donated Structure ("Structure Site") is as follows:

<b>Permitted Reef</b>	<b>Enter Permitted Reef</b>	
<b>Coordinate System</b>	<b>NAD 1927</b>	
<b>Structure Site</b>	<b>Latitude</b>	<b>Longitude</b>
	####	####
	<b>X-Coordinate</b>	<b>Y-Coordinate</b>
	####	####

**5.2 Position.** Donor shall place the Donated Structure at the structure Site described above on the floor of the Gulf of Mexico in a **horizontal/vertical (choose one)** position.

**5.3 Accepted Range.** Donor shall place the Donated Structure as accurately as possible on the Structure Site described above, but in no case shall the Donated Structure be placed more than five hundred (500) feet from the Structure Site on the floor of the Gulf of Mexico. Furthermore, in no case shall the Donated Structure be placed such that a **minimum clearance of eighty-five (85)** feet below the mean low sea level of the surface of the water is not maintained.

**5.4 Representation.** Donor shall provide, at its expense, for a representative of Donee to be present at the Structure Site described above at the time of placement of the Donated Structure. Donee's representative shall act as an observer only and shall not serve, nor be deemed to serve, in any operational or advisory capacity whatsoever. Notwithstanding the above, Donee's representative may advise the Donor on placement of the Donated Structure but only at the specific request of the Donor, its agents, employees, or representatives. In such instances, it is specifically understood that Donor shall assume all responsibility for and all liability which may be associated with, any action resulting from Donor's acting upon

such advice, and for any and all consequences arising therefrom.

- 5.5 Disclaimer.** Donor shall assume all responsibility for and all liability which may be associated with the transport and disposition of the Donated Structure, or any part thereof. Donee shall assume no liability for the transport and disposition of the Donated Structure, or any part thereof. The Donor shall be solely responsible for the Donated Structure until such time as it has been properly placed on the sea floor at the Structure Site specified above and all other terms and conditions of this Agreement, including but not limited to Donee's mailing of the completed "Notification of Acceptance" as specified in Article VIII herein, have been fulfilled.
- 5.6 Structure Site Permits.** Donor warrants that the Donated Structure shall be sited and placed in accordance with all terms, conditions, and special conditions of all U.S. Army Corps of Engineers permits, and all other permits issued to construct the artificial reef, in addition to all specifications contained herein.
- 5.7 Completion.** Donor's proper placement of the Donated Structure at the Structure Site described above and completion of all terms and conditions of this Agreement, including but not limited to Donee's mailing of the completed "Notification of Acceptance" as specified in Article VIII herein, shall relieve Donor of any and all obligations or requirements to further transport or move the structure.
- 5.8 Surveyor's Plat.** Donor agrees to furnish Donee with a certified surveyor's plat of the final location and clearance of the Donated Structure within thirty (30) days following final placement of the Donated Structure.

## **ARTICLE VI - TITLE**

- 6.1 Passing of Title.** After the completion of Donor's operations to place the Donated Structure at the Structure Site described above, and after all other terms and conditions of this Agreement, including but not limited to Donee's mailing of the completed "Notification of Acceptance" as specified in Article VIII herein have been fulfilled, title to the Donated Structure shall pass from Donor to Donee free and clear of all encumbrances of any kind or description.

## **ARTICLE VII - LIABILITY**

- 7.1 Delivery of Structure - Donor's Actions.** Donor shall be solely responsible for the Donated Structure until all terms and conditions of this Agreement, including but not limited to Donee's mailing of the completed "Notification of Acceptance" as specified in Article VIII herein, have been fulfilled. Donor shall indemnify and hold Donee harmless from and against any and all claims, demands, or causes of action of any description in favor of any person for damage or loss to persons or property arising from Donor's actions or failure to act during the operations required to deliver the Donated Structure and to properly place it on the Structure Site described above and until such time as all other terms and conditions of this Agreement, including but not limited to Donee's mailing of the completed "Notification of Acceptance" as specified in Article VIII herein, have been fulfilled.
- 7.2 Delivery of Structure - Donee's Negligence.** Donor shall be solely responsible for the Donated Structure and its delivery until such time as all terms and conditions of this Agreement, including but not limited to Donee's mailing of the completed "Notification of Acceptance" as specified in Article VIII herein, have been fulfilled. However, Donor

assumes no liability and extends no indemnity to Donee for injury or loss sustained by Donee, its employees, agents or third parties, arising solely out of the negligence of Donee, its agents, or employees, during the operations required to deliver the Donated Structure to the Structure Site described above. It is understood and agreed that Donee's representative will serve as an observer only and shall not act, nor be deemed to act, in an operational or advisory capacity during the operations required to deliver and properly place the Donated Structure at the Structure Site. Notwithstanding the above, Donee's representative may advise the Donor on placement of the Donated Structure but only at the specific request of the Donor, its agents, employees, or representatives. In such instances, it is specifically understood and agreed that Donor shall assume all responsibility for, and all liability which may be associated with, any actions which may result from Donor's acting upon such advice, and for any and all consequences arising therefrom.

**7.3 Title Passage of Structure.** Donee shall be responsible for Donated Structure only after all terms and conditions of this Agreement, including but not limited to Donee's mailing of the completed "Notification of Acceptance" as specified in Article VIII herein, have been fulfilled. Donee shall have neither any interest in, responsibility for, nor liability for the Donated Structure or any part thereof until all terms and conditions of this Agreement, including but not limited to Donee's mailing of the completed "Notification of Acceptance" as specified in Article VIII herein, have been fulfilled. Donee agrees to indemnify and hold Donor harmless from and against any and all claims, demands, or causes of action in favor of any person for damage or loss that may occur to persons or property arising after title to Donated Structure passes to the Donee and arising out of or in any way connected with use of the Donated Structure, or any appurtenances attached thereto by Donee or other persons,



provided that the Donated Structure meets the requirements of the National Artificial Reef Plan and the Louisiana Artificial Reef Development Program, except that Donor hereby assumes responsibility and liability for any personal injury, property damages, loss or damage of any description, including but not limited to loss or damage to fish or wildlife, or fish or wildlife habitat, which may result from a spill, seepage, or release from the Donated Structure of hydrocarbons or hazardous materials that are listed in any current federal, state or local law, ordinance, rule, regulation, order, decree, or requirement.

**7.4 Notice of Claims.** In all aforesaid instances wherein the Donee agrees to indemnify the Donor, if such a claim, demand, or cause of action is filed against Donor, Donor shall promptly notify Donee in writing and by certified mail. This notice shall be addressed to the Secretary, Department of Wildlife and Fisheries, and shall specify the nature of and the specific basis for such claim, demand, or cause of action and the amount claimed, or the estimated amount claimed to the extent then known. In all aforesaid instances wherein the Donor agrees to indemnify the Donee, if such a claim, demand, or cause of action is filed against Donee, Donee shall promptly notify Donor in writing and by certified mail. This notice shall be addressed to Company Representative, and shall specify the nature of and the specific basis for such claim, demand, or cause of action and the amount claimed, or the estimated amount claimed to the extent then known.

**7.5 Legal Representation.** In all instances wherein the Donee agrees to indemnify the Donor, at the election of the Donee, the Donee shall either provide legal representation for Donor against such claim, demand or cause of action, or reimburse Donor for all reasonable costs incurred by Donor in defending against such claim, demand or cause of action, provided that the Donor provides written notice to the Donee as provided above.

**7.6 Disclaimer - Liability for Maintenance and Repair.** After all terms and conditions of this Agreement, including but not limited to Donee's mailing of the completed "Notification of Acceptance" as specified in Article VIII herein, have been fulfilled, Donor shall have no obligation or duty whatsoever to provide for the maintenance or repair of the Donated Structure or any appurtenance attached thereto.

## **ARTICLE VIII - ACCEPTANCE**

**8.1 Appearance by Donee.** Donee hereby appears for the purpose of accepting both the Donated Structure and the funds upon the fulfillment of the conditions specified below.

**8.2 Obligation to Accept by Donee.** Donee hereby obligates itself to accept the donation of both the Donated Structure and the funds specified herein upon the fulfillment of the following conditions:

- a. Donor has in fact delivered the Donated Structure to the proper Structure Site as specified herein;
- b. Donor has completed any and all operations to place the Donated Structure at the Structure Site as specified herein;
- c. Donor has conducted a survey and procured a certified surveyor's plat of the Donated Structure at the Structure Site after operations have been completed in full;
- d. Donor has delivered the certified surveyor's plat, as specified in section "c", above to the Donee;
- e. Donee has received, examined, and accepted Donor's certified surveyor's plat and has sent to Donor by certified mail a completed and signed "Notification of Acceptance of Structure Placement and Acceptance of Title", ("Notification of Acceptance") a blank

copy of which is attached hereto and made a part hereof, by certified mail. Unless otherwise agreed, Donee will mail such notification within three (3) working days following receipt of the certified surveyor's plat from Donor, provided that Donee accepts such certified surveyor's plat as indicating proper placement of the Donated Structure at the Structure Site.

**8.3 Acceptance by Donee.** Donee's acceptance of the Donated Structure and funds shall be deemed to occur and title shall pass only upon the fulfillment of the conditions specified in Section 8.2 (a-e) above. Acceptance shall particularly be deemed to occur and title shall pass at 12:00 midnight on the date that Donee mails to Donor the completed "Notification of Acceptance". Acceptance shall not be deemed to occur at any time prior to the fulfillment of said conditions. It is specifically understood and agreed that Donee shall have no ownership interest in the Donated Structure unless and until Donee mails the completed "Notification of Acceptance" and any and all liability for actions, occurrences, or omissions which might occur prior to Donee's mailing of the completed "Notification of Acceptance", other than those arising solely out the direct negligence of the Donee, as provided in Section 7.2 above, shall be the sole responsibility of the Donor.

## **ARTICLE IX - DONATION TO ARTIFICIAL REEF FUND**

**9.1 Donation to the Artificial Reef Fund.** Donor agrees to and shall donate to the Conservation Fund the sum of XXXXXX dollars (\$XXXX.XX), as provided by the Louisiana Fishing Enhancement Act and the Louisiana Artificial Reef Development Program, with such sums then to be placed in the Artificial Reef Fund for the benefit of the Louisiana Artificial Reef Development Program pursuant to the Louisiana Fishing

Enhancement Act and the Louisiana Artificial Reef Development Program, as presently written. The Donor shall deliver the aforesaid sum to the Donee simultaneously with delivering the certified surveyor's plat to the Donee. Acceptance of the aforesaid sum shall be deemed to occur upon Donee's acceptance of the Donated Structure and title passage of the Donated Structure as evidenced by the Donee's mailing of the completed Notification of Acceptance as provided in Article VIII herein.

THUS DONE AND SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2011, at \_\_\_\_\_, in the presence of the undersigned competent witnesses who hereunto sign their names with said appeared to me, notary.

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

DONOR:

BY: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

THUS DONE AND SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2011, at Baton Rouge, Louisiana in the presence of the undersigned competent witnesses who hereunto sign their names with said appeared to me, notary.

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

DONEE:

LOUISIANA DEPARTMENT OF  
WILDLIFE AND FISHERIES

BY: \_\_\_\_\_  
SECRETARY  
ROBERT J. BARHAM

\_\_\_\_\_  
NOTARY PUBLIC

**NOTIFICATION OF ACCEPTANCE OF STRUCTURE PLACEMENT  
AND ACCEPTANCE OF TITLE**

\*

Dear \*:

Reference is made to an Act of Donation to the State of Louisiana from \* dated \* . The Department of Wildlife and Fisheries has received and reviewed the certified surveyor's plat depicting the final location and clearance of your structure \* at our \* reef site.

Pursuant to the aforementioned Act of Donation, in particular Article VIII, the Department of Wildlife and Fisheries hereby accepts the placement of the donated structure and the title to said structure.

Thank you for your cooperation in this matter.

Sincerely,

Douglas D. Peter  
Artificial Reef Coordinator